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of Discrimination and
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Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Letter dated 8 August 1991 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

I have the honour to enclose herewith an information note on certain recent developments in Turkey.

I would be grateful if the present letter and its annex could be circulated as a document of the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under agenda item 10.

(Signed) Gündüz AKTAN
Ambassador
Permanent Representative

GE.91-12692/1123H

A. General situation in Turkey

1. Turkey is located amidst the most unstable regions of the world, namely, the Middle East, Trans-Caucasia and the Balkans. In spite of the difficulties related to this turbulent environment, Turkey has achieved stability, maintained democracy and sustained a rapid pace of socio-economic development.

2. The Republic of Turkey is a unitary, democratic, secular and social State based on the rule of law. It has a fully representative and parliamentarian multi-party democracy which is coupled with a free market economy. There are more than 20 political parties in the country, ranging from the right wing to the extreme left of the political spectrum.

3. Respect for human rights is one of the basic tenets of the Republic of Turkey. Human rights principles are enshrined in the Constitution and upheld not only by the Government, but also by the fully elected Parliament that represents all strata of society and all regions of the country and, as such, reflects the will of the nation. The judiciary, namely the Constitutional Court, the Court of Appeal and all other bodies and authorities entrusted with judicial powers, are fully independent. Moreover, they constitute one of the best guarantees for the supremacy of law in the country, as a result of deeply rooted traditions.

4. Local administrations are vested with extensive decision-making powers for the local people. They consist of a locally elected mayor and a municipal council. They have a budget of their own and have recently been entitled to levy taxes on the local people, which has strengthened their role at the local level. The independence of the local administrations has been safeguarded by the Constitution and is one of the main pillars of democracy in Turkey. Local administrations with vast powers, as mentioned above, reflect different characteristics and aspirations of the Turkish citizens within the framework of the Constitution and national laws.

5. In accordance with the free-market economic system and pluralistic democracy, the individual constitutes the cornerstone of society. The State has the duty to protect and promote the rights of the individual. Turkey is one of the founding members of the Council of Europe and a party to the process of the Conference on Security and Cooperation in Europe (CSCE). Turkey has accepted that its human rights performance be monitored in the above-mentioned multilateral context, in addition to the obligations and commitments that it has assumed in the context of the United Nations human rights machinery.

B. Recent major steps in the field of human rights

6. It may be recalled that Turkey recognized, on 28 January 1987, the competence of the European Commission on Human Rights to receive petitions from any person, non-governmental organization or group of individuals.

7. On 8 January 1990, Turkey recognized the compulsory jurisdiction of the European Court of Human Rights.

8. On 4 March 1990, the Prime Minister issued instructions for the strict implementation of article 136 of the Code of Criminal Procedure, which stipulates the right of all accused persons to have legal counsel at any and every stage of the proceedings. In this connection, it should also be noted that article 135 of the Code of Criminal Procedure stipulates that any person under detention or interrogation has the right not to answer. In addition to this, "testimony by way of free will" is a general principle of the Turkish legal system. In other words, testimony must be free of any kind of pressure. Article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is fully and directly applicable in Turkey.

9. On 15 September 1990, Turkey signed the United Nations Convention on the Rights of the Child.

10. On 6 November 1990, Turkey signed the Ninth Additional Protocol to the European Convention on Human Rights, which stipulates the right of the individual to submit petitions to the European Court of Human Rights.

11. On 6 November 1990, Turkey also signed the revised European Social Charter.

12. In November 1990, the CSCE Paris Charter was signed by Turkey.

13. On 21 November 1990, the Turkish Grand National Assembly adopted Law No. 3679 introducing important amendments to the Turkish Penal Code. The said law came into effect on 29 November 1990. Thus, the death penalty for 18 different types of crimes was abolished and replaced by the penalty of life imprisonment. It is important to underline that the death penalty has not been implemented in Turkey since 1984.

14. On 4 December 1990, the Turkish Grand National Assembly adopted a law concerning the establishment of a Human Rights Inquiry Commission. It is believed that this parliamentary Commission will play a major role in monitoring and further improving the human rights situation in Turkey. It should be added that this Commission has already become operational. It has formed the following sub-commissions:

(a) The Sub-Commission for Prisons: its members have visited the Bursa prison; other penitentiary institutions will also be visited;

(b) The Sub-Commission for Sirnak, which is investigating certain allegations concerning the south-eastern border area;

(c) The Sub-Commission for Police Stations, whose members have visited the Police Headquarters at Ankara.

At the request of its members, the Commission has embarked upon a study with a view to comparing certain Turkish laws with international human rights laws. The Commission has established contacts not only with Turkish but also with foreign non-governmental organizations, including Helsinki Watch and Amnesty International.

15. By its decision No. 1990/35 of 10 December 1990, the Court of Appeal confirmed the following points. Confessions recorded at the Office of the Public Prosecutor or at the police station cannot be used as evidence before the Court. Only confessions made before the Court can serve as a basis for the judgement of the Court. Even in this case, confessions have to be supported by additional evidence. It has thus been proved once more that in the Turkish legal system, interrogation is not a method instituted for obtaining evidence. Interrogation is a means of defence.

16. The anti-terror law (No. 3713) which was enacted by the Grand National Assembly on 12 April 1991 and promulgated on the same day has brought about a radical reform in Turkish criminal law by abolishing articles 141, 142 and 163 of the Penal Code, as well as the Law of Treason Against the Country (No. 2), the Law of Freedom of Conscience and Assembly (No. 6187) and the law relating to publications issued in languages other than Turkish (No. 2932).

17. This reform is a significant improvement for human rights in Turkey. With the abrogation of articles 141, 142 and 163 of the Penal Code, in effect since 1936, establishing an association for communist activities and engaging in communist propaganda are no longer considered offences against the State. By virtue of this amendment, communist activities and propaganda have not been subject to prosecution since 12 April 1991. Therefore, pending prosecutions and related actions will be dismissed. Article 142 is of particular importance, since it is due to this article that many writers were sentenced for engaging in communist propaganda. It can therefore be asserted that "crimes of thought" have been abolished in Turkey. The same applies with respect to article 163 of the Penal Code, which proscribed anti-secular activities and propaganda. Article 163 of the Penal Code was inspired by the Law of Treason against one's own Country (No. 2), enacted in 1922. Owing to this link, offences against secularism were considered as treason.

18. On the other hand, there is a linkage between article 163 of the Penal Code and the Law on Freedom of Conscience and Assembly (No. 6187). In addition to article 163, the Law on Freedom of Conscience and Assembly restricted religious propaganda in the broader sense. Because of this connection, an offence against article 163 was considered at the same time to be an offence violating the Law on the Freedom of Conscience and Assembly. Article 163 and the restrictive Law on Freedom of Conscience and Assembly have now both been abrogated.

19. As the restrictive paragraphs of the Law of Associations (No. 2908), which corresponded to articles 141, 142 and 163 of the Penal Code, have also been abrogated, the scope of the associations has been broadened in order to provide for the full exercise of the right of peaceful assembly.

20. The abolition of the law relating to publications in languages other than Turkish (No. 2932) is a significant development in lifting restrictions on the freedom of thought and expression. As of 12 April 1991, there is no limitation whatsoever on the expression or manifestation of thoughts and opinions in any language, including Kurdish.

21. The anti-terror law provides a clear definition of crimes of terror by specifying terrorist actions and organizations. Thus, a distinction is made

between terrorist crimes and non-violent offences. In fact, everyone not involved in terrorist crimes unhesitatingly enjoys the right to freedom of thought, expression, conscience and religion. The underlying idea is quite obvious: to prevent the destruction of fundamental human rights and to maintain the territorial integrity of the State and national security.

22. This recent law grants conditional release covering all the accused persons and convicts. In this respect, the conditional release applies to crimes committed before 8 April 1991. More than 20,000 prisoners and detainees have already been released in accordance with the relevant provision of the law, reducing by 50 per cent the inmate population of the penitentiary institutions. The remaining approximately 20,000 prisoners will benefit in due time from the provisions relating to conditional release.

23. The anti-terror law also prescribes the non-implementation of the death penalty for crimes committed before 8 April 1991. Thus, death penalty convictions handed down prior to this date will be commuted to varying periods of imprisonment, according to the offence committed.

24. The temporary provisions concerning conditional release are also applicable to those who had left the country for having committed crimes against the security of the State and had lost Turkish citizenship as a result of those acts. In accordance with this recently adopted law, they will benefit from this opportunity granted to them provided that they return to Turkey within two years of 12 April 1991.

25. There are no more political prisoners or prisoners of conscience in Turkey even in the narrow meaning given to these concepts by some non-governmental organizations.

C. Combat against torture

26. In addition to the above, the Government of Turkey would like to reiterate its commitment to combating torture. As is known, Turkey is a party to the United Nations and the European conventions against torture. In this context, it did not fail to recognize the right of the individual to avail himself of the relevant provisions of these instruments to pursue his case at the international level after having exhausted domestic remedies. Turkey submitted to the United Nations Committee against Torture its initial report of implementation contained in document CAT/C/7/Add.6. Turkey also received a delegation of the European Committee for the Prevention of Torture. The said delegation visited all the detention centres and police stations that they wished to see. Thus Turkey has willingly assumed international responsibilities in its combat against torture. In this connection, it should be stressed that the provisions of the United Nations and the European conventions against torture are fully incorporated in Turkish legislation. All the provisions of the said conventions can be invoked before the Turkish courts.

27. To complete this overview, the Government would like to outline once more some basic provisions regarding the prevention of torture.

28. According to the Constitution no one can be held guilty until proved guilty in a court of law, and everyone has the right to defence.

29. In line with these principles, any accused person has the right to have legal counsel at any and every stage of the proceedings, as stipulated in article 136 of the Code of Criminal Procedure. The implementation of this provision has been reinforced through two circulars issued by the Office of the Prime Minister on 26 September 1989 and 4 April 1990.

30. Furthermore, the Constitution prescribes the rule of prompt notification of the detention of a person to his or her close relatives. All detained persons have to be brought before the judge within 48 hours. In collectively committed crimes, this period can be extended to 15 days upon the request of the Public Prosecutor and with the approval of the judge. However, such cases are exceptional and concern only 1.7 per cent of detainees according to the statistics covering the period 1984-1989.

31. Article 135 of the Code of Criminal Procedure stipulates that any person under detention or interrogation has the right not to answer.

32. In addition to this, "testimony on free will" is a general principle of the Turkish legal system. In other words, testimony must be free from any kind of pressure. At this stage, it should be once more stressed that article 15 of the United Nations Convention against Torture is fully and directly applicable in Turkey. As explained above, the Court of Appeal has recently confirmed that confessions recorded at the office of the Public Prosecutor or the police station cannot be used as evidence before the courts. Confessions must be made before the judge in the courtroom and be supported by additional evidence.

33. Another important preventive measure worthy of attention is the fact that, in accordance with a directive issued by the Ministry of Interior, all detainees must undergo a medical examination before and after detention and interrogation. This has become a binding rule. It should be added that forensic doctors are fully independent in the discharge of their functions. At the request of the detainee or the public prosecutor, any other doctor may be chosen to undertake the medical examination.

34. In cases where the crime of torture or ill-treatment is committed despite preventive measures, the perpetrator of the crime will be punished by virtue of the pertinent provisions of the Penal Code. The crime of torture must be officially investigated by public prosecutors. That is to say, as soon as a public prosecutor is informed or has the impression that such a crime has occurred, he is required to make the necessary investigation for the purpose of deciding on further action. In his circular instructions of 7 May 1991 sent to all public prosecutors, the Minister of Justice underlined their responsibility to look into all allegations and to conclude the investigations as promptly as possible. Moreover, the Minister of Justice made reference to the rules regarding medical examination before and after the interrogation and access of lawyers to their clients in custody. By circulating these instructions the Minister of Justice has once more reiterated the commitment of the Government to combat abuses in the exercise of State power.

35. As regards any complaints, including complaints of torture, on the part of individuals, it should be indicated that all Turkish citizens have the right to submit petitions to the competent authorities, as well as to the Parliament. Moreover, everyone has the right to appeal. If a plaintiff is not satisfied with the decision reached at the national level, he or she can refer the complaint to the above-mentioned European organs or to the United Nations Committee against Torture.

36. Under the Turkish legal system, excessive deeds of public officials are considered operational defects for which the State is directly responsible. Accordingly, articles 40 and 41 of the Constitution stipulate the principle of compensation for any damage caused by the abuse of State power. The law of 7 May 1964 on indemnifying people who are unlawfully arrested or detained, the law on public officials, and several decisions of the Supreme Court of Appeal and of the Council of State stipulate the implementation of the principle of compensation for torture. In addition to the above-mentioned legislation, Turkey has signed the European Convention on the compensation of victims of violent offences.

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Sub-Commission on Prevention
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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Letter dated 8 August 1991 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

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1. We are all aware that socio-economic development does not automatically lead to respect for human rights. Besides, underdevelopment should not serve as an excuse for acquiescing in human rights abuses. However, it is evident that development creates the necessary conditions for the promotion and enjoyment of human rights. Indeed, the relationship between human rights and fundamental freedoms, on the one hand, and socio-economic development on the other is of a synergetic nature. Article 22 of the Universal Declaration of Human Rights states that "everyone ... is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

2. With this understanding, the Turkish Government has undertaken a major effort to raise the level of development of the south-eastern region of the country. As is known, some essential social problems faced by this region stem from its low level of development. In other words, there is considerable economic imbalance between the levels of socio-economic development of the south-eastern and the western parts of Turkey. Migration by a by-product of this situation.

3. The Government hopes that the above trend will be reversed as a result of the implementation of the South-East Anatolian Project, one of the most ambitious and biggest development projects in the world. In this connection, it should be noted that the amount of resources transferred by the nation for the development of this region is incomparably higher than the amount of revenue collected therefrom. None the less, the Turkish Government is fully committed to the realization of the project. The South-East Anatolian Project, based on national consensus, reflects the sacrifices as well as the determination of the nation to develop this region.

4. International cooperation, as referred to in Article 22 of the Universal Declaration of Human Rights would be welcomed as a valuable contribution to these efforts in the form of foreign direct investment, joint ventures or economic assistance. The Government believes that those who are sincerely interested in the development of this region would take action in the direction indicated in the above-mentioned article.

I have the honour to enclose herewith an information note on the South-East Anatolian Project. I should be grateful if the present letter and its annex could be circulated as a document of the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under agenda item 8.

Annex

South-East Anatolia Project (GAP)

Scope of the project

1. The South-East Anatolia Project (GAP) is one of the major regional development projects in the world, and the largest and most comprehensive enterprise ever carried out in Turkey.

2. The region comprises six provinces (Adiyaman, Diyarbakir, Gaziancep, Mardin, Siirt and Sanhurfa) in south-eastern Turkey, bordering Syria and Iraq and covers 73,863 sq. km. of land, which corresponds to 9.5 per cent of the total area of Turkey. Formerly known as the "fertile crescent", the upper valley of the Euphrates and Tigris rivers became the cradle of civilization when, around 4500 B.C. the urban revolution - the change from economies based on self-sufficient agriculture to those based on specialized non-agricultural occupations - started in southern Mesopotamia. The industrial tradition then spread over much of south-western Asia, up onto the Anatolian plateau. In 3500 B.C., the Near East, Mosopotamia in particular, became one of the two regions where civilization flourished. Completion of the project in the 2000s will therefore mean the rebirth of the prosperity Mesopotamia enjoyed thousands of years ago.

3. The population in the project region at the 1985 census was 4,303,567 or 8.5 per cent of the national total of 50,664,458. All six provinces in the region are out-migration areas, yet the average annual population growth in the past two decades has remained at 2.9 per cent, which is much higher than the national average of 2.4 per cent.

4. Although the GAP region is one of the underdeveloped regions of the country with a per capita gross product of only 47 per cent of the per capita gross product of Turkey in 1985, it is self-sufficient in basic foodstuffs.

5. The GAP project originally planned by the State Hydraulic Works is a combination of 13 major products, primarily for irrigation and hydropower generation. The project includes the construction of 21 dams and 17 hydroelectric power plants on the Euphrates and the Tigris rivers and their tributaries. It is planned that upon completion, over 1.7 million ha of land will be irrigated and 25,000 GW of hydroelectric energy will be generated annually with the installed capacity of 7,500 MW.

6. The largest projects of this irrigation and energy system are the Atatürk dam and hydroelectric power plant, together with the Sanhurfa tunnels. The total hydroelectric power capacity will be 2,400 MW (8 x 300) and the total irrigation area covered by five projects, 832,000 ha. The most important of these projects are the Sanhurfa - Harran and Mardin - Ceylanpinar irrigation projects, which envisage irrigation of 470,000 ha. The water necessary for these projects will be supplied through 26.4 km of two parallel tunnels with an inner diameter of 7.62 m each. In addition to irrigation and hydropower generation, the GAP project also covers related economic, social, cultural, spatial and commercial developments.

7. The comprehensive nature of the project requires the formulation of specific measures to complement the implementation of the original GAP schemes and incorporate them into a coherent and integrated long-term regional development plan. The primary objective of such an approach is to expedite the implementation of GAP. In this sense, GAP is the integration of a series of projects which are carried out by individual ministries and related implementing agencies in the region.

Objectives and planning approach

8. The objectives of this extensive project are to mobilize regional resources, to eradicate regional disparities, to enhance productivity, to create employment opportunities, to raise income levels, to develop urban centres and to ensure economic growth and social stability in the region.

9. In line with these objectives, the prime concern in planning has been oriented towards identification of the multiplier effects of these large-scale infrastructure projects on the socio-economic structure of the region. The planning methodology in this respect is an intersectoral and comprehensive approach which is rather different from that traditionally and currently applied in Turkey. Such an approach is of an innovative character, since planning practice in Turkey is highly centralized and sectoral. Therefore, GAP should be considered a means of transition from sectoral to intersectoral and/or comprehensive planning and from centralized to decentralized and/or regional planning in Turkey.

10. It is quite evident that such a vast area of irrigation and such an abundance of energy will create important business and development opportunities in other sectors of the economy through backward and forward linkages. On the other hand, there will be social and economic problems and imbalances as a result of the increase in agricultural production. Accordingly, in order to make use of the development opportunity and to effect a smoother transformation of the regional economy, a multidisciplinary integrated project approach has been adopted by the Turkish Government. Such an approach requires the contribution of the majority of the public agencies, which in turn brings up the issue of interagency coordination. The importance of interagency coordination is better understood when it is noted that 5 of the 13 project groups within GAP are already active. In addition, approximately 600 public investment projects are being carried out in the region by various public agencies. For these reasons, the present approach of the Turkish Government concentrates on the formulation of a development programme on the one hand, and the realization of effective interagency coordination activity on the other.

Planning principles and organization

11. The State Planning Organization (SPO) has been given the responsibility for interagency coordination. Since the planning approach for GAP is defined as integrated regional development planning, effective coordination is imperative for successful integration.

12. The prime principle is to make rational decisions, which means attaining maximum benefits with given planning instruments or allocating minimal instruments in reaching predefined targets. Since financial resources are universally scarce, decision makers are urged to develop optimization models in defining appropriate planning action. Within this framework, the major task of the State Planning Organization is to perform in-house coordination to incorporate identified priority projects in annual investment programmes, as well as in five-year development plans. The crucial point is to ensure an adequate synchronization of projects and maximize the effectiveness of public investments. Nevertheless, factors such as the size, diversity and complexity of the investments and the sector-based traditional approach make project integration more difficult.

13. The social and economic development of the region is dependent upon projects which utilize the existing and future potential of the region and bring solutions to problems arising from rapid development. The identification of new projects should proceed concurrently with the financing of the ongoing irrigation and power generation projects. In addition, it is necessary to transform the existing institutional structure of the region and create a new institutional framework which can meet the needs of an advanced social and economic structure. The Government has decided to realize all these activities within the context of a regional planning approach which will be backed up with the appropriate project management system.

14. In order to ensure successful design, planning and implementation for GAP, the Government has decided to create a special organization under the State Planning Organization (SPO). A special project management unit has been established under the coordination and supervision of the South-East Anatolia Project Group of SPO. The rationale behind the establishment of the Project Management Unit is to make use of the skills and experience of international consulting firms in the field of regional planning, to effect the transfer of know-how to local consulting firms in this respect and to expedite the studies required in the decision and action stages. The Under-Secretariat of the South-Eastern Anatolia Project Group, on the other hand is charged with the realization of effective internal coordination with related departments in SPO, as well as external coordination with concerned governmental and non-governmental agencies.

15. SPO provides advisory services to the Government for the determination of economic, social, cultural, spatial and financial policies in the light of available resources. This encompasses preparing long-term development plans and annual programmes to realize the Government's goals and objectives, as well as coordinating and monitoring projects executed by ministries and other public agencies. In accordance with its status, SPO is charged with the coordination and management of the South-East Anatolia Project.

Project components

16. The project, as designed by SPO, has three essential components. The size, diversity and complexity of the investment projects in the region indicate the importance of integrating these projects and of attaching priorities to regional studies. Regional studies have to define general policies and strategies which are required for the coordination of urban and

rural studies. Thus, the GAP project is to be handled in three components; namely, regional planning, rural planning and urban planning. Naturally, regional planning studies have to be conceptualized as an umbrella for urban and rural studies.

Regional studies

17. In the context of regional studies, there is a need for structural analysis for the identification and assessment of the present situation in individual sectors such as agriculture, animal husbandry, fisheries, mining, manufacturing, health, education, tourism, transportation, telecommunications, construction and commerce. Based on the outcome of the analysis reflecting the present regional structure, prospective requirements should also be identified by undertaking the necessary projections. In this respect, the social, economic, spatial and financial impact of major irrigation and hydropower generation projects, as well as other planned, programmed and ongoing investments in the region need to be assessed. These are the prerequisites for the identification of existing and potential problems. Problems can be solved by including appropriate goals, strategies and measures as constitutive elements of adopted policies and investment programmes.

18. This wide range of regional studies and planning activities needs to be supported by an effective management system. Such a management system should embrace scheduling, monitoring and evaluation functions for selected projects in the region which rely on efficient information flow. The function of such a management system as an instrument for decision-making is two-fold: technical and institutional. While the technical aspect includes data collection, compilation, processing and forwarding, the institutional aspect covers administrative structuring and/or managerial organization for formal and informal decision-making.

19. A master plan study has been commissioned to handle the methodological and project managerial issues for the preparation of decisions to be taken by top-level bureaucrats and politicians. Nippon Koei Co. Ltd and Yüksel Proje A.S. are carrying out the master plan study for the development of the GAP region.

Rural studies

20. The purpose of the rural studies is to develop land, water and human resources and to plan the studies and investments necessary for optimum utilization of potential by organizing the social and physical infrastructure in the rural areas.

21. An extensive agricultural research programme has been found to be necessary to provide essential scientific knowledge for agricultural production in the region. Within the framework of an agreement concluded with SPO, the Cukurova University Department of Agriculture in Adana is carrying out an integrated package of research and adaptation projects. The purpose of these projects is to identify the varieties of plants which may be grown most successfully in the region under irrigated conditions and taking into account the existing ecological factors. The establishment of a data bank for the inventory of research studies, a research station and a remote sensing centre are including in the project.

22. Regarding the importance of the training component, a series of discussions has been started with the Food and Agriculture Organization of the United Nations (FAO) with a view to setting up an agricultural extension and training centre. The finding from this research will be disseminated to local agencies, institutions, farmers unions and organizations.

23. Another important study concerns the agricultural marketing and crop pattern of the region. The approach is to analyse the demand and supply structure of domestic and international markets for agricultural products. In the light of the results of market analysis, the crop pattern in the region will be determined according to the competitiveness of identified products. In this case, the market will play a determinant role in designing the crop pattern. The development of an adequate information system, marketing organization and incentive catalogue also need to be taken into account.

24. The rural studies also cover land consolidation activities in the region. While the State Hydraulic Works is in charge of the Atatürk dam and the Sanhurfa tunnels, as well as primary, secondary and tertiary canal construction, The General Directorate for Agricultural Reform is responsible for land consolidation activities. These tasks have to be accomplished in order to achieve production by bringing together extremely dispersed agricultural production units which are under private ownership. Recent efforts of the SPO are oriented towards speeding up this process with computer-aided methods and ensuring inter-agency collaboration between the State Hydraulic Works, the General Directorate for Agricultural Reform, the General Directorate for Rural Affairs and the General Directorate for Titling and Cadastral Works.

Urban studies

25. The objective of the urban studies is to provide better urban services by controlling and directing the effects of the GAP investments in the urban areas. It is obvious that the region which is at present experiencing emigration will be subject to intensive immigration after the completion of the irrigation projects, within two decades. High population growth and increasing job opportunities indicate that there will be a major structural change in the settlement patterns of the region in the future. This will confront urban centres with serious problems in the supply of vital municipal services. For this reason, appropriate measures need to be taken in order to eliminate acute problems, as well as prospective obstacles, in the provision of social and technical infrastructure services in urban centres.

26. Urban studies have been concentrated on two essential issues, namely, physical development planning of urban centres and municipal services planning. Physical development planning activities foresee comprehensive and integrated packages including projects related to water and energy supply, sewerage, traffic communication and water treatment systems tailored to identified urban centres. The preparation of urban expansion programmes, as well as upgrading and legalization programmes for informal housing areas, along with municipal engineering works, are under consideration in this context. Such an integrated approach is an innovative one in comparison with traditional urban development plans currently being implemented by municipalities and the government agencies concerned which deal with each urban sector project individually.

27. Another important issue is the improvement of the managerial skills of municipality personnel in order to provide more efficient urban services. Equipping municipalities with better urban management skills, financial models and accounting systems will lead to the discovery of additional financial resources and the mobilization of idle potential. This is indispensable for rational and effective use of monetary resources for purposefully planned and programmed urban services, which in turn requires internal reorganization in the municipalities. Such a policy is further associated with the implementation of personnel training programmes designed for specific posts and career opportunities.

Prospective planning activities

28. While a list of integrated studies to be undertaken in the future will be produced as an output of the Master Plan Study, there are still some subjects which need to be considered separately. Large-scale dams and irrigation projects have significant repercussions on the man-made environment and, especially, on the natural environment. The effects of a series of ambitious infrastructure projects will influence the ecological environment profoundly. In order to distinguish between the destructive and constructive effects that will become evident after completion of power generation and irrigation projects, an environmental impact assessment study is planned in close cooperation with the United Nations Development Programme (UNDP) and the United Nations Environmental Programme (UNEP). The general approach is to base such a study on a long-range assessment period and identify adverse effects of projects in due time in order to implement the required measures.

29. Further, in connection with irrigation schemes and a critical review of the irrigation technology to be adopted for the region, special attention is to be attached to water resources management. The main objectives are to create an institutional framework for the rational supply of water to individual users or user associations and to ensure prompt provision of technical services to irrigation systems.

30. Another significant system and model study will concern agricultural financing. A review of the existing system is essential for the identification of structural deficiencies in the supply of financial support to agricultural producers and industrialists. Policy steps need to be taken to ensure the efficiency of the agricultural financing system.

Industrial development

31. Successful development of strategic industries will be the first significant move towards industrialization in the GAP region. It will provide a basis for subsequent industrial development in terms of capital investment, technical and managerial skills. This, combined with the development of consumer goods and construction materials industries, will lead to the encouragement of other industries through forward and backward linkages and related economic activities.

32. The increase in income as a result of this initial development will set the stage for further industrialization in the region. The strategic industries will grow, with added business opportunities, expanding markets and improved production and management technologies. Consumer goods and construction materials industries will also grow with urbanization.

33. With the improvement of the region's socio-economic level, new industries will emerge to meet the increasing demand from other sectors. Fertilizer production will be followed by the establishment of an agricultural machinery and equipment industry, resulting in the improvement of agriculture. This will pave the way for the development of heavy industry. The construction materials and printing and publishing industries will grow as the income level in the region increases and urbanization progresses.

34. Tourism-related industries conform to the basis strategy, especially if various potential tourism resources within the region are effectively developed for foreign tourism. Oil-refining, copper products, fertilizer, cement and ceramics are important mining-related industries which can cater for the needs of the domestic market.

35. Another set of industries that will develop in the region will be those serving the primary production/processing oriented industries. These include casting, turning and spare parts production. Supplementary industries are those producing consumer goods such as furniture, utensils and chemicals. These two sets of industries will develop at a later stage following the establishment of the industries listed above and following the growth of population and income in the region.

Conclusion

37. At present, a GAP Master Plan Study completion report is in preparation which will define the existing socio-economic structure of the region and make projections and development proposals with appropriate strategy and policy options. The next phase of the Master Plan will include promotion and implementation. In 1989 complete information packages were prepared and more emphasis is being given to the promotion of GAP. Incentive systems are also to be developed upon completion of the Master Plan.

38. Furthermore, a regional development agency is to be established in order to upgrade and strengthen the information basis related to regional and national capabilities. This agency will aid investors in carrying out market analysis and business-oriented research studies.

39. In order to create an adequate environment for foreign firms to evaluate the agribusiness opportunities in the region, the 4th International Agricultural Fair, AGRO-GAP '89 was held in Sanhurfa in October 1989. The firms that participated in the Fair were able to make their own assessment of the local conditions.

40. As may be realized from the figures and explanations given above, South-Eastern Anatolia will be one of the more highly developed regions of Turkey in the future. Its close location to Middle Eastern countries is an

additional factor increasing its attractiveness for business investments. Therefore it will be wise to have a foothold in this region at an early stage in order to make use of the growing opportunities in the future.

41. The special importance given to the project led to the idea of establishing the Project Management Unit as a regional office of the State Planning Organization (SPO) in Sanhurfa. This office carries out all the coordination and integration activities among the local governmental agencies and institutions by maintaining all types of inventories, plans, programmes and data from the GAP area.

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Forty-third session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Declaration of minimum humanitarian standards

Working paper submitted by Mr. Theo van Boven and Mr. Asbjorn Eide

The attention of the Sub-Commission is drawn to the attached Declaration of minimum humanitarian standards adopted by an expert meeting convened by the Institute for Human Rights, Abo Akademi University, in Turku/Abo, Finland (30 November - 2 December 1990).

GE. 91-12706

DECLARATION OF MINIMUM HUMANITARIAN STANDARDS

Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo, Finland, 30 November - 2 December 1990 (list of participants annexed).

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;
Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;
Concerned that in such situations human rights and humanitarian principles have often been violated;
Recognizing the importance of respecting existing human rights and humanitarian norms;
Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency;
Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;
Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situation, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;
Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom,

from the principles of humanity and the dictates of public conscience;
Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, disturbances, tensions and public emergency;
Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening co-operation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms;

Now, therefore,...
Proclaim this Declaration of Minimum Humanitarian Standards

Article 1

This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as a person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.
2. The following acts are and shall remain prohibited:
   a) violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;
   b) collective punishments against persons and their property;
   c) the taking of hostages;

d) practising, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;
e) pillage;
f) deliberate deprivation of access to necessary food, drinking water and medicine;
g) threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.
2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.
3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.
4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.
2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the objective to be achieved.
3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose or foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.
2. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.
2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.
3. In countries which have not yet abolished the death penalty, sentences of death shall be carried out only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under eighteen years of age at the time of the commission of the offence.
4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;

b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

c) anyone charged with an offence is presumed innocent until proved guilty according to law;

d) anyone charged with an offence shall have the right to be tried in his or her presence;

e) no one shall be compelled to testify against himself or herself or to confess guilt;

f) no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;

g) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of fifteen years shall not be recruited in or allowed to join armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of eighteen to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are

recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every circumstance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead; prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.
2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.

Article 15

In situations of internal violence, disturbances, tensions or public emergency, humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, disturbances, tensions or public emergency.

Article 18

1. Nothing in the present standards shall be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.
2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

Turku/Åbo, 2 December 1990

MINIMUM HUMANITARIAN STANDARDS
International Symposium, Turku/Åbo 30 November - 2 December 1990

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Study of the issue of the privatization of prisons

Working paper submitted by Mr. Miguel Alfonso Martínez

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GE.91-12767/1188H

INTRODUCTION

1. The issue of the privatization of prisons was brought to the attention of the Sub-Commission's Working Group on Detention for the first time during its 1988 session. 1/ Due to the Group's full agenda, only a brief preliminary discussion of this question could take place that year. 2/ Despite this limitation on debate, many participants expressed the view that in future sessions the Working Group should address it on the basis of a working document to be prepared on the subject. The Group requested Mr. M. Alfonso Martínez to draft such a document for the 1989 session. 3/

2. Mr. Alfonso Martínez consequently held conversations on this issue with several non-governmental organizations active in the field of the promotion and protection of the rights of all persons subjected to the various forms of imprisonment or detention and which were present at the early exchange held at the Working Group (i.e. the International Commission of Jurists, Amnesty International and Defence for Children International). Following these consultations, Mr. Alfonso Martínez considered that it would be premature to submit such a document without having benefited from at least a more thorough debate within the Working Group which could make it possible for the Sub-Commission to provide more precise guidelines as to the possible content and ultimate purpose of the document requested.

3. The lively and enlightening debate which followed his opening remarks on this issue at the Working Group's 1989 session (in which he explained his reasons for not submitting any formal document on that occasion), proved the usefulness of such a cautious approach. All members of the Working Group gave their opinions on the subject and several other Sub-Commission members also contributed to the richness of the debate. The statements made by several NGOs (particularly the International Commission of Jurists) offered additional evidence of the well-known potential of these organizations for identifying technical aspects of particularly complex issues such as the one under consideration. 4/

4. On 28 August 1989, the Working Group decided to recommend to the Sub-Commission that Mr. Alfonso Martínez should be requested to prepare a document "... containing proposals on the best way to approach the study on the privatization of prisons". 5/ Acting upon this recommendation, the Sub-Commission adopted decision 1989/110 of 1 September 1989 entitled "Study of the issue of privatization of prisons", in which it requested Mr. Alfonso Martínez to "... prepare, without financial implications, a working paper which would contain proposals on the best way for the Sub-Commission to study further the issue of privatization of prisons". It also requested Mr. Alfonso Martínez to submit his working paper for consideration at its forty-second (1990) session under the agenda item "The administration of justice and the human rights of detainees".

5. Partly because of his academic duties and also because of the time he dedicated to the advancement of another issue to which the Working Group had assigned a higher priority (i.e. the completion of the drafting of the

declaration on the protection of all persons from enforced or involuntary disappearances), it was not possible for Mr. Alfonso Martínez to complete the document requested in time to be discussed by the Sub-Commission at its forty-second session as requested in decision 1989/110.

6. In light of the above, the Working Group decided at its 1990 session to postpone the consideration of this issue until 1991. 6/

7. The present working paper has been prepared for submission to the Sub-Commission pursuant to decision 1989/110. It is also being submitted, for preliminary consideration, to the Working Group on Detention at its 1991 session.

THE ISSUES

8. During the last decade, human rights advocates, sociologists, jurists and the public in general have witnessed the recurrence of a socio-economic phenomenon - the operating of prisons as profit-making enterprises - which most of them had considered to have long ago been superseded by societal development. The management of prisons as a vehicle for profit, a regular practice during the nineteenth century in many industrialized countries, led to such intense labour exploitation, scandals and abuses that the State was forced to assume exclusive administration of the prisons.

9. Obviously, the present trend is not merely a reversion to nineteenth century conditions. History cannot simply repeat itself in this sphere. However, the issues related to both its alleged advantages and disadvantages have prompted serious debate and concerns. The subject has motivated a number of Governments to commission studies designed to examine the pros and cons of the eventual privatization of their penal facilities and to encourage inquiries from private corporations interested in assuming these kinds of functions. Specialized literature on the subject abounds. Academic journals have dedicated special issues to the privatization of prisons and special conferences have been held to examine several aspects of the privatization of penal punishment. The debate will surely continue for years to come.

10. At present, of course, private entrepreneurs continue to provide a variety of services to penal institutions (for example health care and catering, fields in which they have traditionally been active). However, they are now taking advantage of the upsurge in several developed market-economy countries of certain political/economic theories that praise the "overwhelming advantages" of private investors' initiatives over government action to widen their areas of activity. These theories, in reality, are merely modern adaptations of concepts and policies that bloomed in the early stages of the development of market economies. They appeal to those, in both developed and developing countries, who see current governmental practices as being responsible for creating and incapable of resolving the problems. An increasingly dire situation, reflected in rising crime rates, prison overcrowding, a shortage of qualified correctional personnel, a lack of adequate prison facilities and a general dearth of financial resources, often is a result of national/international economic conditions, bureaucratic mismanagement and corruption.

11. It must be stressed at this point that present-day private capital participation in this particular aspect of the administration of justice is not limited to the direct management of a growing number of penal institutions, the most controversial manifestation of prison-for-profit ventures. The areas of private entrepreneurial interest now also include: (a) private financing for prison construction; (b) the private operation of penal industries (c) correctional facility management; and (d) the combined financing, design, construction and operation of entire correctional facilities.

12. Of these four areas, the preferred form of privatization remains (a) the financing of prison construction, which often involves the private firm, as the landlord, leasing out its facility to the correctional agency, the tenant. Areas (c) and (d) are controversial, simply because the responsibilities inherent in the daily administration of a correctional facility vests private persons with an extraordinary amount of power and control over the lives of the inmates. Examples of this responsibility have been shown to include: supervision and eventual repression of the institutionalized person; procedures concerning prisoners' access to food, clothing and shelter; decisions regarding prisoner access to hygienic, medical, educational, rehabilitative and recreational services; control of prisoners' receipt of correspondence, information and visitors; control over the practice of religion; as well as the evaluation of prisoners' conduct, including rewards and punishments, such as the accumulation of good-conduct time and eligibility for parole.

13. Four key reasons have been advanced in support of the privatization of prisons: (a) it is a means of reducing the problems that attend the confinement of prisoners in facilities that are increasingly overcrowded; (b) it increases the flexibility of an overly rigid correctional system; (c) it keeps down the costs of correction; and (d) it will still achieve the conventionally accepted goals of punishment.

14. Institutional overcrowding is a reality in many countries. This generally results from a combination of tougher attitudes towards offenders (including longer sentences) and lack of resources to build the necessary facilities. It is claimed that the activity of the private sector is capable of reducing management and legal problems related to overcrowded conditions of imprisonment. A corollary to that would be that incidents related to those conditions would also diminish.

15. Those who oppose this notion point out that there is no proof that private initiative can directly influence the causes of overcrowding of penal institutions (e.g. it cannot directly influence sentencing policies and practices), and that it has done little or nothing to bring about solutions to overcrowding in some of the fields in which it is possible for corporations to act (e.g. promoting programmes that would allow inmates to reduce the length of their stay in custody, or providing alternatives to imprisonment). They also argue that the major interest of private entrepreneurs with respect to overcrowding is apparently in the financing, building and eventual operation of penal facilities, considered to be a field of operations more profitable than others.

16. Advocates of privatization claim that entrusting private initiative with certain correctional tasks would liberate the latter from "insensitive and inflexible centralized bureaucracy" and would bring about an increased flexibility and capacity on the part of the penal system in facing changes that require rapid decisions, e.g. adapting to a marked increase/decrease in the number of institutionalized individuals. This, they maintain, would also produce a more responsive and efficient system of punishment. Opponents of privatization state that this is such a complicated issue that effective mechanisms to monitor developments in advance and plan possible responses to such changes are very few or non-existent.

17. Restraining correctional costs is a most appealing argument to many countries, both developed and developing. Private consortia engaged in prison-for-profit activities assert that not only can they offer construction at less than conventional cost, but they can also offer protection against soaring interest rates and increasing construction costs by means of more flexible financing arrangements. Against this, it has been argued that, in many cases, the original projected costs submitted by private interests often increase substantially prior to completion and that, at any rate, no solid proof of the greater cost-effectiveness of private sector endeavours in this field has been produced.

18. Sectors interested in privately managed incarceration underscore the apparent inability of Governments to fulfil the conventional goals which have been the main aim of the correctional system since the last century, i.e. to effect substantial or sustained reform in the character or behaviour of convicted offenders (rehabilitation). They have also pointed out that high rates of recidivism occur in many countries. The rejoinder of those who oppose privatization is that there has likewise been no proof of the ability of privately run facilities to achieve the same goals.

19. In addition to all the arguments advanced by the opponents of privatization, the most serious challenge to the proposition derives from the notion that Governments may relinquish a fundamental aspect of their jurisdiction, i.e. the management and supervision of their penal system, by contracting it out to private corporations. The power to punish antisocial conduct is by definition of a public nature; thus, a _prima facie_ contradiction exists between that very nature and the possibility of ceding such a function to institutions whose sole _raison d'être_ is the profitabilty of their endeavours.

20. Even assuming that private management of prisons is more cost-effective than government-operated endeavours, it has been stressed that fiscal efficiency cannot be the sole concern of correction. Other considerations having to do with practical constitutional and other legal issues, as well as with those inherent in the delegation of that authority, its impact on the lives and rights of the institutionalized individuals, and the accountability for breaches thereof, must have a higher value.

21. To concede that private enterprise might have a productive role in certain limited areas of the prison system is entirely different from actually granting a private enterprise the possibility of using the basic element of imprisonment, which is coercion. The fact that the opinions of the management

of private penal institutions could influence the decisions of bodies such as parole boards concerning whether or not an inmate should be released seems to be in total contradiction to the public nature of all aspects of the administration of justice.

22. The possibility of using deadly force in the guardian-inmate relationship poses innumerable ethical and juridical questions, as does the question of the recognition of authority by the individuals institutionalized in private penal facilities. The danger that cost-conscious enterprises might lower the standards required of an individual with responsibilities of guardianship, control and eventual repression is not a merely academic one.

23. Yet another important issue to be examined is the degree to which an individual whose human rights have been breached in a privately run institution can obtain adequate redress from the corporation. There are many examples in the specialized literature pointing out that in several cases, redress has been possible only after protracted litigation which usually requires significant financial resources to pursue.

CONCLUSIONS AND RECOMMENDATIONS

24. From the above, it is evident that the issues inherent in the general proposition of privatization of prisons are numerous, complex, controversial and not fully explored from the conceptual point of view. Many of them give rise to several questions of great significance for the overall "philosophy" of certain fundamental aspects of societal responsibility and institutional life. Moreover, and from the point of view of the work of the Sub-Commission, the practical solutions that may be given to all those questions could have far-reaching implications for the effective implementation of human rights and fundamental freedoms in the daily life of a substantial number of individuals in all societies, i.e. their penal populations.

25. In recent years the number of institutionalized persons subjected to either detention or imprisonment in various types of penal facilities is on the rise in a significant number of countries all over the world. This fact compounds the need to pay increased attention to all possible factors that might affect - positively or negatively - the basic rights and freedoms of persons deprived of their liberty.

26. The debate on the issues related to the privatization of prisons is far from having been exhausted within the Sub-Commission. It is true that although a most fruitful, seminal debate took place in the Working Group in 1989, there has never been a discussion on the subject in the plenary of the Sub-Commission. The first conclusion of this working paper is therefore that the question of the privatization of prisons deserves further debate in this specialized body of the United Nations system. A fresh opportunity should be given to all interested members of the Sub-Commission, and to delegations of observer Governments, intergovernmental and non-governmental organizations, to advance their views on this subject in the light of recent information and of any results that may exist of the experiences related to private prisons.

27. The Sub-Commission will certainly benefit from an updated review of this matter by the Working Group on Detention at its 1991 session. There are reasons to believe that the latter's membership will, to a certain extent, be different from what it was in 1989, when the only substantive debate on this issue took place. There is no reason for the Working Group to limit itself to discussion of the conclusions and specific recommendations for future work included in the present working paper. A debate on the substantive issues involved should be encouraged on that occasion.

28. Nevertheless, for practical reasons, the plenary of the Sub-Commission, under the item "The administration of justice and the human rights of detainees", is the proper forum for the thorough, substantive debate required to shed more light on all the issues related to the proposition of private incarceration.

29. Taking into account the complexity of the subject and the fact that it will be considered - together with other matters - under an agenda item which, as a rule, is taken up in plenary at the end of the session, it seems highly improbable that such a debate can take place in 1991 during its forty-third session. None the less, the Sub-Commission may consider it useful to decide at its present session to establish the basis for an in-depth review of all aspects of this matter in 1992, during its forty-fourth session.

30. Consequently, and as the next step in its further consideration of this subject, it is recommended that the Sub-Commission decide at its present (forty-third) session:

(a) To consider the question of privatization of prisons at its forty-fourth (1992) session under item 10 (a) of its provisional agenda;

(b) To request Governments, intergovernmental and non-governmental organizations to submit their views on this matter to the Secretary-General, if possible not later than 15 April 1992; and

(c) To request the Secretary-General to submit to the Sub-Commission at its forty-fourth session a document in which said responses are to be compiled and presented in a systematic order with analytical comments.

31. After such elements are provided, the Sub-Commission will be in a position to benefit fully from a much-needed, ample and profound debate on all issues related to this subject. Following such a debate, the Sub-Commission may wish to decide, at its forty-fourth (1992) session, on its future course of action on this matter. This should be aimed at reaching conclusions and recommendations on whether or not the privatization of prisons: (a) is an adequate solution for present-day problems faced by many States in connection with this specific aspect of the administration of justice; (b) provides adequate guarantees for ensuring the effective protection of the human rights of all persons subjected to any form of detention or imprisonment; and (c) constitutes a suitable tool for achieving the key correctional, educational and rehabilitative purposes inherent in the administration of justice in any given society.

32. Three options will be open for the Sub-Commission in carrying out its future work on this matter:

(a) To instruct its Working Group on Detention to study this subject further and to submit conclusions and recommendations on: (i) the possible advantages and disadvantages of the privatization of prisons based on a thorough review of the various issues related to the proposition of privately managed incarceration; and (ii) specific standards to be observed in the operation of existing penal institutions under private management;

(b) To establish an in-session working group with a mandate similar to the one described in (a) above; or

(c) To recommend to its parent bodies the appointment of one of its members as Special Rapporteur with the mandate to undertake a special study on the question of the privatization of prisons.

33. Of the three options, the appointment of a Special Rapporteur seems to be the most suitable. On the one hand, the importance and complexity of the issues related to this matter are considerable and require the thorough dedication, time, availability and continuity of effort that only a Special Rapporteur can provide. It is to be noted that, for those same reasons, this new study should preferably be undertaken by a member of the Sub-Commission who is not engaged in carrying out another special study. On the other hand, this new task will further complicate the work of the Working Group on Detention, already overburdened by a full agenda to be covered in the limited number of meetings that all in-session working groups can hold every year.

34. As far as the element of time is concerned, the advantages of the establishment of a new in-session working group exclusively for this purpose are obvious. However, it is clear that, with three other in-session working groups already established and functioning for the foreseeable future, the possibility for Sub-Commission members to participate regularly in this new one would be greatly reduced. The added constraints that its establishment would create for the functioning of plenary meetings of the Sub-Commission must also be taken into account.

Notes

1/ See document E/CN.4/Sub.2/1988/28, para. 10.

2/ Ibid., paras. 47-51.

3/ Ibid., para. 52.

4/ For details on this debate, see document E/CN.4/Sub.2/1989/29, paras. 32-39.

5/ Ibid., para. 40.

6/ See document E/CN.4/Sub.2/1990/32, para. 32.

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ELIMINATION OF RACIAL DISCRIMINATION

ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO THE RACIST AND COLONIALIST REGIME OF SOUTH AFRICA

Working paper submitted by Ms. Judith Sefi Attah

The attention of the Sub-Commission is drawn to the attached Abuja statement on Southern Africa issued by the Ad Hoc Committee on Southern Africa of the Organization of African Unity, which met at Abuja, Nigeria on 29 July 1991.

GE. 91-12748

TEXT OF "ABUJA STATEMENT ON SOUTHERN AFRICA"
BY OAU HEADS OF STATE AD HOC COMMITTEE
SOUTHERN AFRICA

1. Pursuant to the Abuja declaration on South Africa adopted by the twenty-seventh assembly of Heads of State and Government of the OAU, on 5 June, 1991, the OAU Ad-Hoc Committee on Southern Africa met in Abuja on 29 July, 1991 to review recent developments in South Africa.

2. Since the Abuja Summit, significant developments have taken place. The pillars of Apartheid legislation such as the Group areas act, the population registration act and the land acts, have been repealed. However, the painful legacies of these acts remain.

3. The Committee welcomes the repeal of these laws but notes that the fundamental basis of Apartheid - the undemocratic constitution-remains in place. The fundamental question of negotiations and modalities for a non-racial and democratic constitution, have not yet been addressed. The internal security act and a host of other laws continue to proscribe freedom, political activity and still reinforce the apartheid system. Many political prisoners remain incarcerated and not-all exiles have been allowed to return.

4. The committee underscores the fact that central to the struggle for the eradication of apartheid is the transfer of power to a democratic government elected on the basis of a non-racial and democratic constitution. It reasserts, that and drawing up and adoption of this constitution is now the most urgent and pressing question. To this end,

it calls upon the national liberation movement and all the anti-apartheid forces to work in-concert within the framework of a patriotic front.

5. The committee, therefore, calls on the international community to exert all forms of pressure on the South African Government to adopt a democratic mechanism of an elected constituent assembly and the formation of an interim administration, which together, will ensure the drawing up of a democratic non-racial constitution guaranteeing universal suffrage.

6. In this connection, the committee regrets the action taken by certain countries to lift sanctions unilaterally and prematurely while the process for the eradication of apartheid is not yet irreversible. This action can only serve the purpose of removing the incentive for negotiations, embolden the die-hard elements in the apartheid system and ultimately undermine the process of change now budding in South Africa. This unfortunate, unilateral and premature action is not only contrary to the Harare Declaration, it also violates the 1989 UN consensus Declaration on Apartheid and its destructive consequences in Southern Africa.

7. The Committee notes that sanctions have been a potent weapon and an integral part of the strategy in the struggle against apartheid. They have, to a large extent, been instrumental in raising the cost of apartheid and compelling the regime to accept the principle of negotiations. As a powerful form of pressure, sanctions continue to be needed to bring the apartheid regime to the negotiating table and

to keep it committed to the process of change. The committee therefore, commends those countries which have not yet lifted sanctions, and calls on them to maintain sanctions as a form of pressure to ensure constitutional change. It also urges those who have lifted some sanctions to maintain the remaining sanctions and to use their leverage on the South African regime to accelerate the process of constitutional change.

8. The Committee notes that the revelation of the Southern African Government's collusion with, and funding of, the Inkatha confirms what the OAU and the oppressed people of South Africa have consistently stated as the South African Government's sponsorship of the violence in the townships and destabilization of the Liberation movements. This revelation, while increasing the credibility of the liberation movements, has seriously eroded the confidence in the goodwill and intention of the apartheid regime and has cast serious doubts on its honesty and its commitment to change. The revelations of duplicity and bad faith on the part of the De Klerk Government should rekindle the resolve of the international community to exert maximum pressure on the regime to expedite the process of change.

9. The Inkatha scandal and the acknowledgement by the apartheid regime of the existence of slush-funds, and use thereof, have created a crisis of confidence which is seriously threatening the process of change in South Africa. The onus, now rests squarely on Mr. De Klerk to demonstrate good faith and move swiftly to rebuild confidence and promptly begin the process of negotiations towards a new constitution

which would lead to the establishment of a democratic, non-racial government in South Africa within a time frame to be agreed by all the parties concerned.

10. The Committee resolves to intensify diplomatic and other international actions on behalf of the OAU, to mobilize support in other to exert maximum pressure on the apartheid regim to create the conditions conducive to negotiations, commence the process of negotiations and to proceed with the promulgation of a new constitution. The fundamental rights of all South Africans, including the right to vote, should be fully guaranteed by that constitution.

11. The Ad-Hoc Committee decides therefore to undertake diplomatic action through the current Chairman of the OAU to mobilize support. The Committee has also decided to despatch as appropriate Ministerial delegations to certain capitals in order to further this objective.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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Forty-third session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Note verbale dated 14 August 1991 from the Permanent Mission of Kuwait to the United Nations Office at Geneva addressed to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

The Permanent Mission of the State of Kuwait to the United Nations Office at Geneva would be grateful if the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities would kindly bring the attached note verbale to the attention of the Rapporteurs of the Sub-Commission who are concerned with agenda item 6. The Chairman is also requested to circulate the note verbale among the members of the Sub-Commission.

(Signed) Salem Jaber Al-Ahmad Al-Sabah
Ambassador
Permanent Representative

GE.91-12789/1220H

Ref: 3/10/7/15

The Permanent Mission of the State of Kuwait to the United Nations Office at Geneva presents its compliments to the Centre for Human Rights and wishes to clarify certain matters referred to by some human rights organizations at the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under agenda item 6, "Question of the violation of human rights and fundamental freedoms".

Before 2 August 1990, the State of Kuwait was a State governed by the rule of law in which Kuwaitis and foreigners lived under a just legal system. The high proportion of foreign residents (more than 70 per cent of the population of Kuwait) holding various nationalities (more than 130 nationalities) constitutes cogent proof of the fact that they were leading tranquil and secure lives under the rule of law in the State of Kuwait.

After its liberation from the clutches of Iraqi occupation on 26 February 1991, Kuwait began to tend its wounds and gather in its dispersed population in order to resume its former status as a civilized State participating in the promotion of justice, freedom and equality like the other peace-loving countries of the world. However, it has been subjected to a vicious, hostile campaign, concerning violations of human rights in Kuwait, in which rumours are being circulated with a view to provoking sedition and covering up the inhuman practices in which some groups residing in Kuwait participated in collusion with the invading forces. Naturally, all those who collaborated with the Iraqi forces during the occupation are now claiming to be subjected to ill-treatment on the part of the Government and people of Kuwait.

There may well have been some individual cases of ill-treatment in the early days following the liberation, in the absence of the legitimate Government. If such individual cases did indeed occur, they were a natural reaction, brought about by psychological pressures resulting from the effects of the Iraqi aggression, against some groups which collaborated with the invading forces, since many persons had suffered the ordeal of seeing their fathers, mothers, brothers, sisters and children tortured or killed before their eyes and had witnessed sexual assaults on their wives, daughters and sisters.

Nevertheless, the Government is diligently prosecuting all persons who have engaged in such acts, in accordance with the law in force in Kuwait. However, it should not be forgotten that acts of reprisal are also being committed against the Kuwaiti security forces by foreign groups still living in Kuwait. This has happened primarily at check-points where several members of the Kuwaiti armed forces have been killed. Some of those acts have also been committed by the "human mines" planted by the Iraqi intelligence services before their withdrawal from Kuwait in order to stir up sedition within the country.

Although the invading forces attempted to destroy everything in Kuwait, thereby making the tasks of the legitimate Government more difficult, especially from the security and judicial standpoints, since its return to the country the Kuwaiti Government has been diligently endeavouring to bring to justice all those misguided persons who are prejudicing the security and safety of its citizens.

The State of Kuwait is also prosecuting those who collaborated with the forces of the Iraqi regime during its occupation of Kuwait, in accordance with the law in force in the State of Kuwait. The Kuwaiti judiciary has dealt correctly and justly with all the cases brought before it and has passed equitable judgement on all the defendants, regardless of their nationality. None of them has been brought before the court without witnesses and evidence and none of them has stood before the court without a lawyer. The court has granted all requests relating to the defence of the accused, who have been acquitted or convicted either in their presence or in absentia.

Moreover, the Government of Kuwait reached an agreement with the International Committee of the Red Cross, under the terms of which the latter was invited to visit and hold private interviews with any detainees in Kuwait and submit reports to the authorities for the investigation of any violations committed against them. The Government also appointed a representative of the Ministry of Justice at each detention centre to monitor and investigate any alleged violations of the rights of citizens or foreign residents of any nationality.

How many States in the world, after experiencing circumstances such as those through which the State of Kuwait has passed, have accorded such legal treatment to persons accused of collaborating with their enemies who invaded their territory, killed their children, young men and aged citizens, raped their women and tortured persons of both sexes. Kuwait has done so in the presence of the various international information media, as well as Ammesty International and other human rights associations, which observed and heard all the court proceedings.

With regard to the question of stateless persons, we wish to point out that no one in the world lacks a nationality or roots in a particular country of origin. In the past, their fathers or grandfathers must have come from some place of origin somewhere in this wide world. In the case of the nomads and sheep-herders in the Kuwaiti desert, they have long been well known to the people of Kuwait and, being very few in number even in relation to the small size of Kuwait's own population in the past, were all granted Kuwaiti citizenshp when the Nationality Act came into force following the achievement of independence.

It is quite easy to claim to belong to the category of so-called stateless persons in Kuwait. A person merely has to conceal his passport and claim to be a Kuwaiti whose forefathers had been sheep-herders in the Kuwaiti desert from time immemorial but who has not yet been granted citizenship. The underlying reason for these persons to conceal their original nationality and appear before the Kuwaiti authorities in the guise of stateless persons can be found in the services which are enjoyed by Kuwaitis since, in some matters, the law treats stateless persons in the same way as Kuwaitis on humanitarian

grounds. It is easy to understand why some persons seek to acquire the nationality of States whose citizens enjoy privileges. This, in itself, is unobjectionable since many nationals of third world countries apply for naturalization in Europe, America or elsewhere in accordance with the law of the State whose nationality they wish to acquire without concealing their original nationality. There is a difference between a person seeking to acquire the nationality of a country in which he wishes to live and a person seeking to acquire the nationality of a country by claiming to have no roots in any country of the world and classifying himself as stateless.

Of the many Arabs and non-Arabs who have lived among the people of Kuwait and rendered splendid services to the State of Kuwait, some have been granted Kuwaiti citizenship and others have retained their own nationality without prejudice to any of their rights. This is only natural. However, in the eyes of the people and the Government, it is unacceptable for persons without roots and of questionable loyalty (as manifested during the Gulf war) to live among us, since this is far from just and equitable and is prejudicial to the security of the State of Kuwait.

The Permanent Mission of the State of Kuwait trusts that all parties will endeavour to ascertain the true state of affairs by seeking detailed information and background knowledge from reliable sources. It also hopes that emphasis will be placed on the positive aspects and that the critical situation and exceptional circumstances through which the State of Kuwait has passed, and is still passing, as a result of the iniquitous Iraqi aggression will be duly taken into consideration. Kuwait was, and still is, a State governed by the rule of law in which human rights are respected.

We would be grateful if the Centre would kindly bring this note to the attention of the Chairman of the forty-third session of the Sub-Commission and have it circulated among the members as an official document of the Sub-Commission.

The Permanent Mission of the State of Kuwait takes this opportunity to convey to the Centre for Human Rights the assurances of its highest consideration.

Geneva, 14 August 1991

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
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Protection of Minorities
Forty-third session
Agenda items 7 and 8

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Letter dated 16 August 1991 from the Permanent Representative of the Republic of Iraq to the United Nations Office at Geneva addressed to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

The Delegation of the Republic of Iraq to the forty-third session of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities has the honour to request that the report of the inter-agency mission to Iraq headed by Prince Sadruddin Aga Khan, contained in Security Council document S/22799 of 17 July 1991, be made available to the Sub-Commission under items 7 and 8.

(Signed) Abdul Munim AL-KADHI
Chargé d'affaires

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COMMISSION ON HUMAN RIGHTS
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Forty-third session
Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Question of the human rights of persons subjected to any form of detention or imprisonment

Question of human rights and states of emergency

Note verbale dated 19 August 1991 to the Centre for Human Rights from the Permanent Mission of the Kingdom of Morocco to the United Nations Office at Geneva

1. The Permanent Mission of the Kingdom of Morocco to the United Nations Office at Geneva and the other international organizations in Switzerland has the honour to provide herewith information additional to that contained in its note No. 953 of 23 July 1991.

2. On the occasion of the twelfth anniversary of the recovery of the province of Ouad Eddahab and in response to the Memorandum submitted to H.M. King Hassan II by the Advisory Council on Human Rights, the Sovereign granted his pardon to 40 prisoners whose names appear in the list appended hereto.

3. The royal pardon also concerns 269 persons originating from the Saharan provinces. These freed persons had been placed under house arrest following their apprehension in the military operation and security zones because of their intelligence with the enemies of the territorial integrity of the Kingdom.

4. The Permanent Mission of the Kingdom of Morocco would be grateful if the Centre for Human Rights would kindly communicate the foregoing in its entirety to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and to the Commission on Human Rights.

List of the beneficiaries of the royal pardon

Sarrifi Mohamed	Ben Malek Habib
Nouda Abderrahman	Idrissi Kaitouni Ali
Bekkali Abdellatif	Al-Qaroui Said
Meftah Abdelmajid	Taarji Abdessamad
Jaidi Mohamed	Benzekri Driss
El-Khichi Abou Bakr	Douraidi Tahar
Abbad Mohamed	M'Ifi Abdelaziz
Derdabi Hassan	Benabdessalam Abdelilah
Alami Bouti Hassan	Bouqarou Abdelfettah
Fahli Omar	Kabbaj Abdelghani
Ajaha Abdellah	Mechrouhi Dahbi
El-Haij Ahmed	Lakhsassi Mahmoud
Hamdani Najib	Qabil Saadia
Bernoussi Nezha	Boubekri Ahmed
Harouchi Mohamed	Tahri Moulay Ali
Saber Mohamed	Es-Saghir Ali
Hafidi Abderrazak	Khlfaoui Said
Abinagh Abdellah	En-Naguir Abderrazak
Lahrairi Abdellah	Qanouch Mohamed
Jaouhari Nour-Eddine	Ahrat Al-Hassan